

EVERYBODY
10 PAGES
READS IT.

LAST EDITION.

MONDAY EVENING.

TOPEKA, KANSAS, JUNE 5, 1905.

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TWO CENTS.

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in diameter and the majority of her quick firing guns on the port side were destroyed. Her forward funnel is partly shot away and one hole along the water line measures ten feet.

A dispatch from Makuru says that the Japanese battleship Ashahi was largely engaged with the Russian battleship Borodino. After the Borodino took fire and was sinking the Ashahi suspended firing, but the Borodino continued to fire. Practically the last shot struck the Ashahi astern on the starboard side, killing Lieut. Morihita and seven men. Morihita's leg was shot off, but using his sword as a crutch he managed to reach the deck, where he died. A dying sailor asked for paper on which to write a farewell message to the Japanese navy. He wrote: "Banzai! I die a glorious death."

HE SAYS HE'LL WIN.

C. E. Gault Certain of Victory in Oil Refinery Case—The Brief.

Mulwene & Gault, attorneys for Warden E. B. Jewett in the state oil refinery case, filed in the supreme court on Saturday afternoon their brief in reply to the briefs filed by Attorney General Coleman and S. M. Dear of Cheney.

Mr. Gault said in speaking of the case: "We are going to win this case. People don't generally think that we will win it, but we know the people are going to be surprised. We know we have a good case."

Counsel for Mr. Jewett, after briefly discussing the motives of the state, certain parts of the return or answer filed by the warden, discuss the facts which may be considered by the court and argue that the state's case is such as will be judicially noticed by the court without formal introduction of evidence.

The construction to be placed upon the act is then discussed. The act is analyzed and many alleged inconsistencies therein pointed out. It is shown that the act is not a public purpose.

First, it is shown that the act authorizes the construction of an oil refinery on the site to be secured by the state. It is shown that the act does not authorize the construction and maintenance of a branch penitentiary. Second, it is shown that the act provides for the establishment of quarters at the branch penitentiary and as the quarters and oil refinery constitute the entire establishment, the oil refinery must be the branch penitentiary.

It is then shown that the officers entrusted with the execution of the act may in their discretion do the thing provided for without employing convicts at all.

The constitutional questions involved are considered under three heads, as follows:

First, the effect of the act is to make the state a party in carrying on a work of internal improvement.

Second, the effect of the act would be to embark the state in trade and commerce and tax the citizens for oil and a public purpose.

Third, the act and title thereto contain more than one subject.

Under the first head it is argued that the act is unconstitutional and that an oil refinery considered alone is an internal improvement, and that by the use of its servants in construction of a branch penitentiary, the state thereby becomes a party in carrying on such improvement.

Under the second head counsel for the state argues that the oil refinery is a work of trade and commerce and that the state has no right to engage therein in competition with its citizens.

Under the third head counsel for the state argues that the act would constitute taxation for other than a public purpose. Numerous authorities are cited in support of this contention.

WEATHER IS HOT.

Sunday and Today Have Been Windy as Well as Warm.

Sunday the temperature in Topeka was high, the government thermometer registering a maximum of 91 degrees.

This morning the mercury started out at 74 degrees, 49 degrees higher than it was Sunday morning at the same time, and with the handicap of three degrees started for a new record.

The mercury was high at the Kansas stations yesterday, the maximum and minimum temperatures for the 24 hours ending this morning at seven o'clock being: Baker 90, 70; Dodge City 88, 70; Macksville 88, 68; McPherson 92, 70; Manhattan 88, 72; Olathe 90, 70; Russell 90, 68; Sedan 88, 70; Topeka 91, 72; Wichita 90, 70.

Today's corn and wheat region bulletin says: "The weather was clear and sunny, with a few clouds in the morning."

Missouri during the past 24 hours ranged 90 degrees and over in eastern and central Kansas and 80 degrees in western and southern Kansas."

The forecast for Kansas is "generally fair and light breeze, with a shower or two Tuesday night and east portion Tuesday."

The wind at noon was south blowing 24 miles an hour. The river at seven o'clock was 10.1 feet above flood stage on the gauge, showing a fall of three tenths of a foot since Sunday morning.

The hourly temperatures recorded by the government thermometer today were:

7 o'clock.....75 11 o'clock.....86

8 o'clock.....82 12 o'clock.....89

9 o'clock.....84 1 o'clock.....90

10 o'clock.....84 2 o'clock.....90

Wind from south 22 miles an hour at 2 p. m.

BALL GAMES ALL WEEK.

Springfield Opened Today—Leavenworth to Come Friday.

Topeka will have baseball all this week. Springfield came today for a series of four games. Hurst, the fat man of the league, who owns the Highlanders, has been strengthening his team, until he again promises to be a formidable factor in the running.

This afternoon he sent Ellis on the rubber to do the pitching. Alderman was up for the White Sox. The Springfield series will close Thursday.

On next Friday Leavenworth will come here to open a series of four games. This will be the first appearance of the Woodpeckers as well as of the Highlanders.

Temperatures in Large Cities.

Chicago, June 5.—7 a. m. temperature: New York 86, Philadelphia 68, Cincinnati 86, Boston 70, Washington 68, Minneapolis 68, St. Louis 76.

Chicago, June 5.—Cornet P. Shea, president of the International Brotherhood of Teamsters, has been arrested on a charge of criminal libel preferred by Robert J. Thorne, assistant general manager of Montgomery Ward & Co.

Shea was arrested on a capias issued by Judge H. B. Betha of the United States district court, following the filing of a suit by Thorne, who, in addition to making the charge of criminal libel, stated that Shea had defamed him by saying that he was a ne'er-do-well.

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